

## ISSUANCE OF BONDS

### **§293.41. Approval of Projects and Issuance of Bonds.**

(a) Bonds, as referred to in this section include any bonds authorized to be issued by the Texas Water Code or special statute, and are represented by an instrument issued in bearer or registered form. This section does not apply to refunding bonds, and bonds issued to and approved by the Farmers Home Administration of the United States Department of Agriculture or the Texas Water Development Board, or successor agencies. This section does apply to revenue notes as stated in §293.80(d) of this title (relating to Revenue Notes).

(b) The commission has been given the statutory responsibility to approve projects relating to the issuance and sale of bonds for districts as defined in Water Code, §49.001(1) and other districts where specifically required by law.

(c) This section does not apply to a district if:

(1) the boundaries include one entire county;

(2) the district was created by special act of the legislature; and;

(A) the district is located entirely within one county and entirely within one or more home-rule municipalities;

(B) the total taxable value of the real property and improvements to the real property zoned by the one or more home-rule municipalities for residential purposes and located within the district does not exceed 25% of the total taxable value of all taxable property in the district, as shown by the most recent certified appraisal tax roll prepared by the appraisal district for the county; and

(C) the district was not required by law to obtain commission approval of its bonds before September 1, 1995;

(3) the district is a special water authority as defined by Water Code, §49.001(8) or;

(4) the district is governed by a board of directors appointed in whole or part by the governor, a state agency, or the governing body or chief elected official of a municipality or county and does not provide water and wastewater services to residential retail customers as its principal function.

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**§293.42. Submitting of Documents.**

Applicants shall submit all of the required data at one time in one package. Applications may be returned for completion if they do not satisfy the requirements and conform to the bond application report format.

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**§293.43. Application Requirements.**

For the approval of projects and the issuance of bonds, a district shall submit:

(1) an application including the subject matter contained in Water Code, §49.181, together with the materials required by Water Code, §36.171(b) for Groundwater Conservation Districts; the Texas Water Code, §54.037, for Regional Plan Implementation Agencies; and the Texas Water Code, §12.082, for Freshwater Supply Districts;

(2) a certified copy of the district board's resolution authorizing submission of application for bond issuance.

(3) evidence acceptable to the executive director of compliance with Water Code, §49.010, and, if applicable, Water Code, §54.016, and Texas Local Government Code, §42.042, including consent by any city having extraterritorial jurisdiction, if not previously provided to the commission, and referencing the appropriate petition or bond application if these documents have been previously provided;

(4) a filing fee of \$500 plus the cost of any required notice;

(5) a bond application report in accordance with the applicable provisions of the "Bond Application Report Format" manual adopted by the executive director, and currently in effect, which manual shall be subject to revision, as deemed necessary by the executive director; and

(6) additional data and information as the executive director or the commission may deem necessary and pertinent to the bond application under consideration.

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**§293.44. Special Considerations.**

(a) Developer projects. The following provisions shall apply unless the commission, in its discretion, determines that application to a particular situation renders an inequitable result.

(1) A developer project is a district project which provides water, wastewater or drainage service for property owned by a developer of property in the district, as defined by Water Code, §49.052(d).

(2) Except as permitted pursuant to subsection (a) (8), the costs of joint facilities that benefit the district and others should be shared on the basis of benefits received. Generally, the benefits are the design capacities in the joint facilities for each participant. Proposed cost sharing for conveyance facilities should account for both flow and inflow locations.

(3) The cost of clearing and grubbing of district facilities easements that will also be used for other facilities that are not eligible for district expenditures, such as roads, gas lines, telephone lines, etc., should be shared equally by the district and the developer, except where unusually wide road or street rights-of-way or other unusual circumstances are present, as determined by the commission. The district's share of such costs is further subject to any required developer contribution pursuant to §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer). The applicability of the competitive bidding statutes and/or regulations shall be determined by the amount of the estimated district share, including any required developer contribution; provided, however, that in instances where such clearing and grubbing construction contracts are let and awarded in the developer's name and the developer's aggregate share of such costs, including any required developer contribution, exceeds 50% of the total construction contract costs, the competitive bidding statutes and/or regulations are not considered to be applicable.

(4) A district may finance the cost of spreading and compacting of fill in areas that require the fill for development purposes, such as in abandoned ditches or floodplain areas, only to the extent necessary to dispose of the spoil material (fill) generated by other projects of the district.

(5) The cost of any clearing and grubbing in areas where fill is to be placed should not be paid by the district unless the district can demonstrate a net savings in the costs of disposal of excavated materials when compared to the estimated costs of disposal off site.

(6) When a developer changes the plan of development requiring the abandonment or relocation of existing facilities, the district may pay the cost of either the abandoned facilities or the cost of replacement facilities, but not both.

(7) When a developer changes the plan of development requiring the redesign of facilities that have been designed, but not constructed, the district may pay the cost of the original design or the cost of the redesign, but not both.

(8) A district shall not finance the pro rata share of oversized water, sewer or drainage facilities to serve areas outside the district unless:

(A) such oversizing:

(i) is required by or represents the minimum approvable design sizes prescribed by local governments or other regulatory agencies for such applications;

(ii) does not benefit out-of-district land owned by the developer;

(iii) does not benefit out-of-district land currently being developed by others; and

(iv) the district agrees to use its best efforts to recover such costs if a future user outside the district desires to use such capacity; or

(B) the district has entered into an agreement with the party being served by such oversized capacity which provides adequate payment to the district to pay the cost of financing, operating and maintaining such oversized capacity; or

(C) the district has entered into an agreement with the party to be served or benefitted in the future by such oversized capacity, which provides for contemporaneous payment by such future user of the incremental increase in construction and engineering costs attributable to such oversizing and which, until the costs of financing, construction, operation and maintenance of such oversized facilities are prorated according to paragraph (2) of this subsection, provides that

(i) the capacity or usage rights of such future user shall be restricted to the design flow or capacity of such oversized facilities multiplied by the fractional engineering and construction costs contemporaneously paid by such future user, and

(ii) such future user shall pay directly allocable operation and maintenance costs proportionate to such restricted capacity or usage rights.

(9) Railroad, pipeline or underground utility relocations that are needed because of road crossings should not be financed by the district; however, if such relocations result from a simultaneous district project and road crossing project, then such relocation costs should be shared equally.

(10) Engineering studies, such as topographic surveys, soil studies, fault studies, boundary surveys, etc., that contain information that will be used both for district purposes and for other purposes, such as roadway design, foundation design, land purchases, etc., should be shared equally by the district and the developer, unless unusual circumstances are present as determined by the commission.

(11) Land planning, zoning and development planning costs should not be paid by the district, except for conceptual land use plans required to be filed with a city as a condition for city consent to creation of the district.

(12) The cost of constructing lakes or other facilities that are part of the developer's amenities package should not be paid by the district. The cost of combined lake and detention facilities should be shared with the developer on the basis of the volume attributable to each use, and land costs should be shared on the same basis, unless the district can demonstrate a net savings in the cost of securing fill and construction materials from such lake or detention facilities, when compared to the costs of securing such fill or construction materials off-site.

(13) Bridge and Culvert Crossings shall be financed in accordance with the following provisions:

(A) The costs of bridge and culvert crossings needed to accommodate the development's road system shall not be financed by a district unless such crossing consists of one or more culverts with a combined cross sectional area of not more than nine (9) square feet. The districts share shall be subject to the developer's thirty percent (30%) contribution as may be required by §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer).

(B) Drainage Districts and Levee Improvement Districts which were confirmed and operating pursuant to the Water Code Chapters 56 and 57, respectively, prior to September 1, 1989, may fund the costs of bridge and culvert crossings larger than those specified in subparagraph (A) of this paragraph which are necessary as a result of required channel improvements subject to the following limitations:

(i) the crossing must be located entirely or partially within the district's boundaries;

(ii) the drainage channel construction or renovation must benefit property within the district's boundaries;

(iii) the costs shall not exceed a pro rata share based on the percent of total drainage area of the channel crossed, measured at the point of crossing, calculated by taking the total cost of such bridge or culvert crossing multiplied by a fraction, the numerator of which is the total drainage area located within the district upstream of the crossing, and the denominator of which is the total drainage area upstream of the crossing.

(iv) the district shall be responsible for not more than fifty percent (50%) of the pro rata share as calculated under this subsection, subject to the developer's thirty percent (30%) contribution as may be required by §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer);

(C) The cost of replacement of existing bridges and culverts not constructed or installed by the developer, or the cost of new bridges and culverts across existing roads not financed or constructed by the developer, may be financed by the district, except that any costs of increasing the traffic carrying capacity of bridges or culverts shall not be financed by the district.

(14) In evaluating district construction projects, including those described in paragraphs (1) - (12) of this subsection, primary consideration shall be given to engineering feasibility and whether the project has been designed in accordance with good engineering practices, notwithstanding that other acceptable or less costly engineering alternatives may exist.

(15) Bond issue proceeds will not be used to pay or reimburse consultant fees for the following:

(A) special or investigative reports for projects which, for any reason, have not been constructed and, in all probability, will not be constructed;

(B) fees for bond issue reports for bond issues consisting primarily of developer reimbursable and approved by the commission but which are no longer proposed to be issued;

(C) fees for completed projects which are not and will not be of benefit to the district.

(D) provided, however, that the foregoing limitations shall not apply to regional projects or special or investigative reports necessary to properly evaluate the feasibility of alternative district projects.

(16) Bond funds may be used to finance costs and expenses necessarily incurred in the organization and operation of the district during the creation and construction periods as follows:

(A) Such costs were incurred or projected to incur during creation, and/or construction periods which includes periods during which the district is constructing its facilities or there is construction by third parties of above ground improvements within the district.

(B) Construction periods do not need to be continuous; however, once reimbursement for a specific time period has occurred, expenses for a prior time period are no longer eligible. Payment of expenses during construction periods is limited to five years in any single bond issue.

(C) Any reimbursement to a developer with bond funds is restricted to actual expenses paid by the district during the same five year period for which application is made pursuant to this subsection.

(D) The district may pay interest on the advances under this paragraph. Section 293.50 of this title (relating to Developer Interest Reimbursement) applies to interest payments for a developer and such payments are subject to a developer reimbursement audit.

(17) In instances where creation costs to be paid from bond proceeds are determined to be excessive, the executive director may request that the developer submit invoices and cancelled checks to determine whether such creation costs were reasonable and customary and necessary for district creation purposes. Such creation costs shall not include planning, platting, zoning, other costs prohibited by paragraphs (10) and (14) of this subsection and other matters not directly related to the district's water, sewage and drainage system, even if required for city consent.

(18) The district shall not purchase, pay for or reimburse the cost of facilities, either completed or incomplete, from which it has not and will not receive benefit, even though such facilities may have been at one time required by a city or other entity having jurisdiction.

(19) The district shall not enter into any binding contracts with a developer which compel the district to become liable for costs above those approved by the Commission.

(20) A district shall not purchase more water supply or wastewater treatment capacity than is needed to meet the foreseeable capacity demands of the District, except in circumstances where

(A) lease payments or capital contributions are required to be made to entities owning or constructing regional water supply or wastewater treatment facilities to serve the district and others;

(B) such purchases or leases are necessary to meet minimum regulatory standards; or

(C) such purchases or leases are justified by considerations of economic or engineering feasibility.

(b) All projects.

(1) The purchase price for existing facilities not covered by a preconstruction agreement or otherwise not constructed by a developer in contemplation of resale to the district should be established by an independent appraisal by a registered professional engineer hired by the district. The appraised value should reflect the current condition of the facilities and estimated cost of repair, as evidenced by an on-site inspection.

(2) In order for a proposed project to be considered feasible, the aggregate wastewater treatment capacity authorized under permits held by the applicant and/or developer should be adequate to serve the projected buildout used in the projection of revenues and expenses.

(3) Contract revenue bonds proposed to be issued by districts for facilities providing water, sewer or drainage, pursuant to contracts authorized under Local Government Code, §402.014, or other similar statutory authorization, will be approved by the commission only when the city's pro rata share of debt service on such bonds is sufficient to pay for the cost of the water, sewer or drainage facilities proposed to serve areas located outside the boundaries of the service area of the issuing district.

(4) When a district proposes to obtain water or sewer service from a municipality, district or other political subdivision and proposes to use bond proceeds to compensate the providing political subdivision for the water or sewer services on the basis of a capitalized unit cost, e.g., per connection, per lot, or per acre, the commission will approve the use of bond proceeds for such compensation under the following conditions:

(A) the unit cost is reasonable;

(B) the unit cost approximates the cost to the entity providing the necessary facilities, or providing entity has adopted a uniform service plan for such water and sewer services based on engineering studies of the facilities required; and

(C) the district and the providing entity have entered into a contract which will:

- (i) specifically convey either an ownership interest in or a specified contractual capacity or volume of flow into or from the system of the providing entity;
- (ii) provide a method to quantify the interest or contractual capacity rights;
- (iii) provide that the term for such interest or contractual capacity right is not less than the duration of the maturity schedule of the bonds; and
- (iv) contain no provisions which could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

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**§293.45. Action of the Commission and Bond Proceeds Fee.**

(a) The commission may by order dismiss an application for lack of prosecution or failure to comply with the regulations of the commission, allow the applicant to withdraw the application, or approve or deny the project and the issuance of bonds therefore. Upon issuing such an order, the commission shall forward certified copies to the applicant and the attorney general of Texas. District compliance with any special condition in the Order Approving Engineering Project and Issuance of Bonds, as executed by the commission, is mandatory. Unless bids are received and accepted for sale of the bonds within one year of the effective date of the commission's order approving the bonds, the district may not proceed with the sale of such bonds without executive director approval of an application for an extension of time meeting the requirements of §293.87 of this title (relating to Application for Extension of Time to Sell Bonds). Under no circumstances shall a commission order approving a bond issue be extended beyond three years from the date of the commission order originally approving the bonds.

(b) If the bonds are approved by the commission, the district shall pay to the commission by check 0.25% of the principal amount of the bonds actually issued not later than the seventh business day after receipt of the bond proceeds. The commission may allow the district to pay a lesser amount if it determines that the circumstances surrounding a particular bond issue justify a lesser amount.

(c) The commission may condition the approval on any terms or conditions considered appropriate by the commission.

**§293.46. Construction Prior to Commission Approval.**

The developer may proceed with financing or construction of water, wastewater and drainage facilities contemplated for purchase by the district prior to commission approval of the bond issue designed to finance the project under the following conditions:

(1) Prior to entering into construction contracts for such facilities, the developer and district shall execute an agreement setting out the terms of reimbursement, providing for the use of the facilities by the district until reimbursement and providing that the construction contract will be



awarded and administered in accordance with commission regulations and applicable statutes relating to districts. If the district has not been created at the time of the execution of the construction contracts, the developer and district shall execute an agreement as described in the preceding sentence within 60 days after confirmation of the district. The contract shall not bind the district to payment of costs above that approved by the Commission. If such an agreement is not entered into within the time period specified above, and such actions of the developer are not subsequently ratified and approved by the district in a subsequent agreement with the developer, the developer shall be denied interest costs.

(2) All construction plans, specifications, and contract documents as set forth in §293.62 of this title (relating to Construction Related Documents To Be Submitted to the Commission), change orders and supporting engineering data for construction or installation of the facilities shall be submitted to the appropriate commission field office in a timely manner, together with evidence that the materials have been filed with and approved by the district and have been noted in the district's minutes (if the district has not been created, the documents shall be filed with the district within 30 days after creation).

(3) All construction plans and specifications for proposed projects must be approved by all cities and agencies having jurisdictional responsibilities over the district prior to construction contract award by the developer.

(4) The appropriate commission field office shall be notified of the bid opening at least five days prior to the opening.

(5) Contract advertising and award and construction and installation of facilities shall be accomplished in the manner required by the general law for districts and in conformity with commission rules. For construction contracts awarded after the effective date of this subsection (September 5, 1986), if substantial compliance with statutory requirements is not achieved, reimbursement to a developer may be limited to the final construction contract amount, or a lesser amount, if more reflective of the actual value of such facilities as may be determined by the commission, without developer interest.

(6) The filing of the materials provided herein or construction inspections by the commission shall not constitute approval of the project in any manner. A person proceeding with construction of a project prior to its formal approval by the commission shall do so with no assurance that public funds will be authorized for acquiring the facilities. Construction which is not in the best interests of the district, and improper or ineligible expenditures, will be disallowed for district purchase.

(7) The commission will not approve payment on completion-type construction contracts unless alternate bids are received on monthly pay-type construction contracts, and then only if it is clearly indicated that it is to the district's financial advantage to assume the payment on completion-type construction contracts.

(8) Commission representatives shall have the right to inspect the facilities construction at any time and without notice while construction activities are being carried on. The appropriate commission field office shall be notified of the date and time of the final inspection for each construction contract at least five days prior to the inspection.

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**§293.47. Thirty Percent of District Construction Costs To Be Paid by Developer.**

(a) It has been determined by experience that some portion of the cost of district water, wastewater and drainage facilities in certain districts should be paid by a developer to insure the feasibility of the construction projects of such districts. Accordingly, this section applies to districts which have a ratio of debt (including proposed debt) to certified assessed valuation of more than 10%. This section does not apply to:

(1) a district which has a ratio of debt (including proposed debt) to certified assessed valuation of 10% or less; provided, however, that any bond issue proposed to be exempted on this basis must include funds to provide sufficient capacity in facilities exempted in subsection (d) of this section to serve all connections to be financed by the bond issue;

(2) a district which obtains an acceptable credit rating on its proposed bond issue pursuant to the provisions hereof; or

(3) a district which obtains a credit enhanced rating on its proposed bond issue and which the commission, in its discretion, finds to be feasible and justified, based upon satisfactory evidence submitted by the district, without such developer contribution.

(b) For purposes of this chapter, the following definitions shall apply:

(1) Developer is as defined in Water Code, 49.052(d);

(2) Debt includes all outstanding bonds of the district, all bonds approved by the commission and not yet sold (less such portions thereof for which the authority to issue such bonds has lapsed or been voluntarily cancelled), all proposed bonds with respect to which applications for project and bond approvals are presently on file and pending with the commission, and all outstanding bond anticipation notes which are not to be redeemed or paid with proceeds derived from such pending bond application(s). For the purpose of this subsection, the amount of such outstanding bond anticipation notes shall be deemed to be the sum of:

(A) the principal amount of the bond anticipation notes;

(B) the accrued interest thereon; and

(C) all bond issuance costs relating to the refunding of such bond anticipation notes, including capitalized interest.

(3) Certified assessed valuation is a certificate provided by the central appraisal district in which the district is located either certifying the actual assessed valuation as of January 1, or estimating the assessed valuation as of any other date.

(4) Acceptable credit rating is a rating of Baa or higher from Moody's Investors Service, Inc., or BBB or higher from Standard & Poors Corporation, which rating is obtained by the district independent of any municipal bond guaranty insurance, guarantee, endorsement, assurance, letter of credit or other credit enhancement technique furnished by or obtained through any other party.

(5) Credit enhanced rating is a rating of Aa or higher from Moody's Investors Service, Inc., or AA or higher from Standard and Poors Corporation, which rating is obtained by the district by virtue of municipal bond guaranty insurance, furnished by or obtained through any other party; provided, however, that such municipal bond guaranty insurance shall be unconditional, irrevocable and in full force and effect for the scheduled maturity of the entire bond issue; and provided, further, that payment of the premium on such municipal bond guaranty insurance shall not be made from district funds except through the establishment of the interest rate or premium or discount on such bonds.

(c) If a district anticipates receipt of a certified assessed valuation evidencing a debt ratio of 10% or less or an acceptable credit rating, or a credit enhanced rating, as provided in subsection (a) of this section, prior to the bond sale identified in the bond application being considered, the district may, at its discretion, request a conditional waiver to the developer cost participation requirements of this section as follows:

(1) At the time the district makes application for approval of its project and bonds, the district may include a written request for a conditional waiver of the 30% developer cost participation requirements of this section to be considered by the commission at the time of the bond application hearing, which request shall specifically state on which basis the district requests such waiver. The waiver request shall be accompanied by a written statement from the district's financial advisor stating that, in his opinion, the district can reasonably be expected to qualify for either an acceptable credit rating or a credit enhanced rating, and that the district financing is feasible without the developer contribution.

(2) Except for districts which have achieved a debt ratio of 10% or less at the time of application, the cost summary in support of any bond application proposed to be exempted by virtue of subsection (a) of this section, must show the district bond issue requirement, cash flow, and tax rate with and without the developer contribution.

(3) If a conditional waiver is granted by the commission in anticipation of the District obtaining an acceptable credit rating, a credit enhanced rating or a certified assessed valuation evidencing a ratio of debt to certified assessed valuation of 10% or less, no bonds shall be sold by the district unless such acceptable or enhanced credit rating is obtained or such debt ratio is achieved.

(4) If a bond issue is approved on the basis of obtaining an acceptable credit rating, and an acceptable credit rating is not obtained, and if the district wishes to proceed with such bond issue on the basis of an enhanced credit rating, the district shall not issue the bonds unless the district requests and obtains a commission order approving the bonds to be sold with an enhanced credit rating and finding the financing to be feasible without the developer contribution.

(5) Upon request by the district, the commission order approving a bond issue without developer contribution may authorize an alternative amount of bonds to be issued with developer

contribution in the event compliance with subsection (a) of this section is not achieved. Such order may contain other conditions otherwise applicable to a bond issue requiring developer contribution.

(d) Except as provided in subsection (a) of this section or in the remaining provisions of this subsection, the developer shall contribute to the district's construction program an amount not less than 30% of the construction costs for all water, wastewater and drainage facilities, including attendant engineering fees and other related expenses, with the following exemptions:

- (1) wastewater treatment plant facilities, including site costs;
- (2) water supply, treatment and storage facilities, including site costs;
- (3) stormwater pump stations associated with levee systems, including site costs;
- (4) that portion of water and wastewater lines from the district's boundary to the interconnect, source of water supply, or wastewater treatment facility as necessary to connect the district's system to a regional, city, or another district's system;
- (5) pump stations and force mains located within the boundaries of the district which directly connect the district's wastewater system to a regional plant, regardless of whether such plant is located within or without the boundaries of the district;
- (6) segments of water transmission or wastewater trunk lines of districts or other authorities which are jointly shared or programmed to be jointly shared between the district and another political subdivision whether inside or outside of a participating district or authority;
- (7) water and wastewater lines serving or programmed to serve 1,000 acres or more within the district;
- (8) drainage channels, levees and other flood control facilities and stormwater detention facilities, or contributions thereto, meeting the requirements of §293.52 of this title (relating to Storm Water Detention Facilities) or §293.53 of this title (relating to District Participation in Regional Drainage Systems), and which are serving or are programmed to serve either areas of 2,000 acres or more or, at the discretion of the commission, areas of less than 2,000 acres, as the commission may deem appropriate to encourage regional drainage projects. Construction cost paid in lieu of such a contribution does not qualify as an exemption unless the facility constructed is itself exempt;
- (9) land costs for levees or stormwater detention facilities; and
- (10) alternate water supply interconnects between a district and one or more other entities.
- (11) lease payments for central plant capacity not included in operating expenses.

(e) A developer will also be required to contribute toward construction costs in districts which are within the limits of a city, except for:

(1) facilities that were completed or under construction as of December 1, 1986;

(2) districts previously created or in the process of creation which, prior to December 1, 1986, have filed petitions with the commission requesting creation; or

(3) districts that are providing facilities and services on behalf of, in lieu of, or in place of the city and which have contracted with the city to receive rebates of 65% or more of the city taxes actually collected on property located within the district.

(f) The developer's contribution toward construction cost shall be reduced by the amount that the developer is required by a city, state or federal regulatory agency to pay toward costs that are otherwise eligible for district financing.

(g) The developer must enter into an agreement with the district, secured by a letter of credit or a deferral of reimbursement of bond funds owed (as provided in subsection (k) of this section) prior to advertisement for sale of the district's bonds specifying that if the construction project is not completed because of the developer's failure to pay its share of utility construction costs and/or engineering costs within a reasonable and specified period of time, the district may draw upon the letter of credit to pay the developer's share of construction costs and/or engineering costs. The agreement shall also provide that a default by the developer under the agreement shall be deemed to have occurred if: the letter of credit is not renewed for an additional year at least 45 days prior to its expiration date; or the construction project has not been completed as certified by the district's engineer at least 45 days prior to its date of expiration. The letter of credit must be from a financial institution meeting the qualifications and specifications as specified in §293.56 of this title, must be valid for a minimum of one year from the date of issuance, and should provide that upon default by the developer under the agreement, the financial institution shall pay to the district, upon written notice by the district or the executive director, the remaining balance of the letter of credit. Although such letters of credit provide for payment to the district upon notice by the executive director, the district remains solely responsible for the administration of such letters of credit and for assuring that letters of credit do not expire prior to completion of the construction project(s) specified therein.

(h) Actual payment of funds for the district's construction project shall be made by the developer to the district within 10 days following the developer's receipt of billing. The developer's applicable share will be adjusted by the overruns or underruns on developer participation items and will be shared by the developer at the same percentage utilized in determining his initial contribution.

(i) The district (or district engineer) shall forward to the commission's executive director copies of the board approved monthly construction contract pay estimates, engineering fee statements and/or other adequate documentation reflecting payment of the developer's required contribution to construction and engineering costs.

(j) A district may submit other information and data to demonstrate that all or any part of this section should not apply and/or request that it be waived.

(k) If the bond issue includes funds owed the developer in an amount which exceeds that amount required as the developer's contribution and the estimated costs of required street and road

construction, the district may request a waiver of the requirement of a letter of credit if the developer enters into an agreement with the district whereby the developer agrees to defer receipt of payment of a sufficient amount of such owed funds until the facilities for which guarantees are required have been completed and certified complete by the district's engineer. Any such agreement shall be made a part of the agreement required by subsection (g) of this section if the funds are being withheld for the developer 30% contribution of construction costs, and if appropriate, such agreement shall be made part of the street and road construction Agreement required by Section 293.48 of this title, if the funds are being withheld for guaranteeing street and road construction costs.

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**§293.48. Street and Water, Wastewater and Drainage Utility (street and utility) Construction by Developer.**

Except as otherwise provided, unless street and utility construction is completed within the area to be developed by the proposed bond issue, the developer must provide assurance to the satisfaction of the executive director, prior to advertisement for sale of the district's bonds, that such street and utility construction will be completed as hereinafter provided.

(1) The developer must enter into an agreement with the district, secured by a letter of credit, specifying that if street and utility construction is not completed within a reasonable and specified period of time after the district sells its bonds, the district may award a contract for completion of the streets and utilities with financing to be accomplished by utilizing the letter of credit; provided, however, the district shall not proceed in such a manner until the executive director, after having given at least ten days written notice to both the district and the developer, has reviewed the matter, either on the petition of the district or on his own motion and has approved the district's awarding of the contract and utilization of the letter of credit; and provided further, the executive director may extend the time for the developer to complete the streets and utilities if the developer renews the letter of credit and adequately compensates the district for lost revenues and taxes resulting from failure to complete the streets and utilities within the specified time. In the event that the letter of credit has not been renewed or replaced 45 days prior to its expiration date, or in the event that the developer commences any proceeding, voluntary or involuntary, or any proceeding, voluntary or involuntary, is commenced against the developer involving the bankruptcy, insolvency, reorganization, liquidation, or dissolution of the developer, or any receiver is appointed for the developer, or the developer makes a general assignment for the benefit of creditors, the district shall have the immediate right to draw down the lesser of the current cost, as estimated by the district's engineer, to construct the streets and utilities, or the entire remaining balance of the letter of credit. The current estimated costs to construct the streets and utilities shall include construction contract amounts, engineering, surveying and testing fees, and a 10% contingency. The district shall deposit such funds in a separate account and shall not commit or expend such funds until the executive director has held the hearing and authorized use of the funds as provided in this subsection. Within 30 days after final completion of the streets and utilities, the district shall provide an accounting of the use of funds drawn pursuant to the provisions hereof and shall refund any remaining funds, including accrued interest, if any, to the developer or his designee. A district shall not allow any letter of credit to expire, except upon completion of the paving in substantial compliance with the agreement or written approval of the executive director. A copy of the street and utility construction agreement meeting the criteria specified in §293.57 of this title

(relating to Form of Street and Utility Construction Agreement), the letter of credit and any amendments or renewals thereof shall be submitted to the executive director within ten days after their execution or receipt by the district. The letter of credit must be from a financial institution meeting the qualifications as specified in §293.56 of this title (relating to Requirements for Letters of Credit).

(2) The developer shall include in the street and utility construction contract a provision that places the responsibility on the contractor for repair and clean-up of broken manholes, buried valve boxes, broken wastewater pipe, and all other damage to district facilities caused by construction of streets and utilities.

(3) The district shall charge a district employee or consultant with the responsibility to frequently inspect and conduct operational tests on unused facilities and promptly report:

(A) undue facility and equipment deterioration, leaks, silting, infiltration and other problems with utility systems resulting from nonuse; and

(B) damage caused by vandalism, or road, street, commercial, industrial and/or housing construction in order to establish responsibility promptly.

Adopted September 30, 1996

Effective October 22, 1996

#### **§293.49. Document Identification.**

All correspondence, plans and specifications, monthly pay estimates, and other documents, submitted to the executive director shall be identified by the district's name, related bond issue amount and date of commission approval.

#### **§293.50. Developer Interest Reimbursement.**

(a) A developer may be reimbursed by a district for interest accrued for a period of up to two years after the final payment by the developer on approved construction pay estimates, professional fees and attendant nonconstruction costs paid by a developer for providing facilities in anticipation of sale to such district. If final payment on a construction contract is 95% complete, the initiation of the two year interest accrual period will be six months from the date the contract is 95% complete, unless the developer can demonstrate a genuine contractual dispute with the contractor, or other extenuating reasons, as determined by the commission. The interest rate shall not exceed the net effective interest rate on the bonds sold, or the interest rate actually paid by the developer for loans obtained for this purpose, whichever is less. If a developer uses its own funds rather than borrowed funds, the net effective interest rate on the bonds sold shall be applied.

(b) If reimbursement for accrued interest for a period of more than two years after the completion date allowed in (a) of this subsection is requested by a district, and if no interest reimbursement has occurred, additional accrued interest up to five years from the completion date of the construction contracts including related professional fees and nonconstruction costs may be allowed if deemed feasible by the commission, and if:

(1) the actual costs incurred by the developer plus the total allowed interest does not exceed present day costs for the facilities at the time of purchase; or

(2) the aggregate of the amounts included in such district's bond issue for accrued developer interest for such two-year period, any proposed additional accrued developer interest, any accrued interest on outstanding bond anticipation note(s) of such district, and any capitalized interest on such bond issue does not exceed an amount equal to four years' interest on the total bond issue, said interest rate to be calculated on the basis of the net effective interest rate at which the bonds are actually sold; provided, however, that unless specifically requested by the district, recommended in writing by the district's financial advisor and approved by the commission, a district bond issue including additional accrued developer interest pursuant to this subsection shall not provide for capitalized interest on such issue for a period of less than one year.

(c) The developer shall not be reimbursed for interest accrued on his share of construction costs as required by §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer).

(d) If otherwise determined to be feasible by the commission, time limitations on accrued developer interest shall not apply to:

(1) wastewater treatment facilities serving or programmed to serve 2,000 acres or more;

(2) water supply and treatment facilities serving or programmed to serve 2,000 acres or more;

(3) that portion of water and sanitary sewer lines from the district's boundary to the interconnect, the source of water supply or wastewater treatment facility, when such source of water supply or wastewater treatment facility serves 2,000 acres or more;

(4) that portion of water and sanitary sewer lines serving or programmed to serve 1,000 acres or more; or

(5) drainage channels, levees and other flood control facilities and stormwater detention facilities meeting the requirements of §293.52 of this title (relating to Storm Water Detention Facilities) and §293.53 of this title (relating to District Participation in Regional Drainage Systems) which are serving or are programmed to serve 2,000 acres or more or at the discretion of the commission, areas less than 2,000 acres, as the commission may deem appropriate to encourage regional drainage projects.

(e) These time limitations on accrued developer interest also apply to advances made for necessary organization and operation costs as allowed under §293.44(a)(16) of this title (relating to Special Considerations).



**§293.51. Land and Easement Acquisition.**

(a) Water, Sanitary Sewer, Storm Sewer and Drainage Facilities Easements. All easements required within a district's boundaries for water lines, sanitary sewer lines, storm sewer lines, drainage channels, sanitary control at water plants, and noise and odor control at wastewater treatment plants shall be dedicated to the district or the public by the developer without payment or reimbursement from the district. If any easements are required for such facilities on land not owned by a developer in the district, the district may acquire such land at its appraised market value, and may also pay legal, engineering, surveying or court fees and expenses incurred in acquiring such land, and §293.47 of this title (relating to Thirty Percent of District Construction Costs To be Paid by Developer) shall not apply to such acquisition.

(b) Plants, Lift or Pump Stations, Detention Ponds and Levee Sites. All land needed by a district for plants, lift or pump stations, detention/retention ponds, or levees may be acquired in fee simple or by easement from any person, including the developer, in accordance with this section, and §293.47 of this title (relating to Thirty Percent of District Construction Costs To be Paid by Developer) shall not apply to such acquisition. If a district acquires such a site from a developer within the district or subsequent owner of developer reimbursables, the price shall be determined by adding to the price paid by the developer for such land or easement in a bona fide transaction between unrelated parties the developer's actual carrying charges (taxes and interest paid to the date of acquisition by the district); provided, however, if the executive director determines that such price appears to exceed the fair market value of such land or easement, he may require an appraisal to be obtained by the district from a qualified independent appraiser and payment to the seller may be limited to the fair market value of such land as shown by the appraisal; if the seller acquired the land after the improvements to be financed by the district were constructed, the price shall be limited to the fair market value of such land or easement established without the improvements being constructed; or if the seller acquired the land more than five years before the creation of the district and the records relating to the actual price paid and the actual carrying charges are impossible or difficult to obtain, the district, upon executive director approval, may purchase such site at fair market value based on an appraisal prepared by a qualified, independent appraiser. If the land or easement needed by the district is being acquired based on the appraised value, the application to the commission for approval to purchase such site must contain a request by the district to acquire the site in such manner and must explain the reason the seller is unable to provide price and carrying cost records. If the land or easement needed by the district is being acquired from an entity other than a developer or subsequent owner of developer reimbursables in the district, the district may pay the fair market value established by a qualified, independent appraiser, and may also pay legal, engineering, surveying or court fees and expenses incurred in acquiring such land or easement.

(c) Joint Stormwater Detention/Water Amenity Facilities. If a detention or retention pond is also being used as an amenity by the developer, payment to the developer shall be limited to that cost that is associated only with the drainage function of the facility. The land costs of combined water amenity and detention facilities should be shared with the developer on the basis of the volume of water storage attributable to each use.

(d) Land or Easements Outside the District's Boundaries. Land or easements needed for any district facilities outside the district's boundaries may be purchased by the district as part of the district

project at a price not to exceed the fair market value thereof. The district may also pay legal, engineering, surveying or court fees and expenses spent in acquiring such land. If the land or easements are purchased from a developer who owns land within the district, the price paid by the district shall be determined in accordance with subsection (b) and such purchase price shall be subject to the provisions of §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer) unless the facilities constructed in, on, or over such land, easements or rights-of-way are, exempt from such contribution or the district is exempt from such contribution under the terms of §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer).

(e) If the out-of-district land or easement is required for a drainage channel downstream of the district and a portion of such land or easement is or will be needed by another district(s), whether upstream or downstream, for development, the district shall only pay for its proportionate share of the land costs based upon the acreage of the drainage area contributing drainage to such drainage channel at full development. However, in the event there is no developer in another district(s) to dedicate the district's pro rata share of the required land, the district may pay the entire cost to acquire such land, but the commission shall order the other district(s) to reimburse the district at such time as development occurs in the other district that requires such drainage right-of-way.

(f) **Regional Facilities.** A district may use bond proceeds to acquire the entire site for any regional plant, lift or pump station, detention pond, drainage channel, or levee if the commission determines that regionalization will be promoted and the district will recover the appropriate pro rata share of the site costs, carrying costs and bond issuance costs from future participants. The district may pay the fair market value based on an appraisal for such regional site and also may pay legal, engineering, surveying or court fees and expenses incurred in acquiring such land. The commission shall, by separate order, order other districts participating in such regional facility to reimburse the acquiring district a proportionate share of such site costs, carrying costs and bond issuance costs at such time as development occurs in such other districts requiring such regional site.

(g) Prior to the district purchasing or obligating district funds for the purchase of sites for water plants, wastewater plants or lift or pump stations, the district must have a registered professional engineer certify that the site is suitable for the purposes for which it intended and identify what areas will need to be designated as buffer zones to satisfy all entities with jurisdictional authority.

#### **§293.52. Storm Water Detention Facilities.**

A district may use bond proceeds to acquire or construct storm water detention facilities, as part of an authorized district project the cost of which shall be subject to developer contribution under the provisions of §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer) unless the district or the project is exempt under such regulation, provided:

(1) the storm water detention facilities are either necessary as an alternative to the drainage channel improvements in that channel improvements will not provide adequate drainage to all or any portion of the land within the district, or cost effective as opposed to alternative drainage improvements, or required by a public entity having drainage jurisdictional responsibility;

(2) the facilities are designed and constructed so as to be capable of attenuating only the flood water quantity produced by the differences between the post-development peak rate of runoff and the pre-development peak rate of runoff, such differential being based on design criteria established by the responsible jurisdictional public entity, if available, unless the local political subdivision with drainage jurisdiction justifies to the commission the approval of district costs based on criteria different from this criteria; and

(3) all required permits and approvals are obtained prior to construction of the storm water detention facilities, including without limitation, any permits required by the U. S. Corps of Engineers and any approvals required by any city within whose extraterritorial jurisdiction the district lies, the county engineer, any flood control district, the U. S. Corps of Engineers and any necessary approval of the commission under the Texas Water Code, §16.236.

**§293.53. District Participation in Regional Drainage Systems.**

A district may use bond proceeds to pay assessments or charges for capacity in regional stormwater management systems, subject to developer contribution under the provision of §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer), unless the district or the project is exempt under §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer), provided:

(1) the regional stormwater system has been adopted by a public entity having drainage jurisdiction and regulatory authority over the construction of drainage improvements;

(2) participation in the regional system is required by the public entity having drainage jurisdiction to mitigate the impact of district development activity on flood potential and is required in lieu of any other drainage facilities within or outside of the district that could be constructed directly by the district for the same purpose;

(3) the cost of participation in the regional system is uniform over a given watershed or planning area and is established by the regulatory body of the public entity having drainage jurisdiction based on engineering studies of the proposed regional facilities required. Such studies should show that the charge for capacity in the regional system is comparable to the cost of alternative facilities constructed by individual districts, averaged throughout the watershed; and

(4) the right to the capacity in the regional system purchased by the district is established by contract with the public entity having drainage jurisdiction.

**§293.54. Bond Anticipation Notes (BAN).**

A district may issue bond anticipation notes for any purpose for which bonds of the district have previously been voted or may be issued for the purpose of refunding previously issued bond anticipation notes. All bond anticipation notes issued by a district shall conform to the following requirements:

(1) A bond application containing all projects to be financed by the BAN and the principal of and interest on the BAN shall be on file with the commission.

(2) The financial advisor of the district renders a written opinion to the district to the effect that the district can be reasonably expected to sell its bonds, under then prevailing market conditions, in a principal amount at least sufficient to redeem and pay the principal of and accrued interest on the BAN on or prior to their stated maturity date.

(3) The proceeds of the BAN may be used to pay only the district's allowable share of the costs of facilities as provided in §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer) until the commission has unconditionally determined that the district is exempt from developer participation.

(4) The interest rate on the BAN shall be limited to the maximum rate at which the district could have issued bonds on the date of issuance of the BAN pursuant to applicable statute or valid city consent.

(5) All BAN shall be sold at par.

(6) The proceedings authorizing the issuance of the BAN shall provide that the BAN shall be redeemed at not more than their par value within 30 days after receipt of proceeds from bonds issued for the purpose of redeeming the BAN.

(7) No district funds shall be used to purchase bond or BAN insurance, collateral guarantees, letters of credit or other forms of credit enhancement.

(8) No BAN proceeds shall be used for the purpose of paying allowable developer interest, as provided in §293.50 of this title (relating to Developer Interest Reimbursement).

(9) Except as hereinafter otherwise provided, BAN shall not be used to finance facilities unless the plans and specifications therefor have been approved by all regulatory authorities having jurisdiction thereof and such plans and specifications have been filed with the commission in connection with the district's pending bond application.

(10) Issuance of BAN shall not prejudice the right of the commission to refuse to approve all or any portion of a bond application or any cost or facility contained therein.

(11) BAN shall be payable solely from the proceeds of the district's bonds, as approved by the commission, and no other district funds shall be encumbered, pledged, committed or used for such purpose.

(12) Prior to the issuance of the BAN, the developer shall provide the district a letter of credit, irrevocable development loan commitment or other guarantee for the applicable contribution of construction and engineering costs for each project to be financed with BAN proceeds as required by §293.47(h) of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer).

(13) Prior to the issuance of the BAN's, the developer and district shall enter into a street and road construction agreement as required by §293.48 of this title (relating to Street and Road Construction by Developer).

**§293.55. Tax Anticipation Notes.**

Tax anticipation notes may be issued by districts solely in the manner and for the purposes described in Water Code, §49.154, as amended. No tax anticipation notes shall be redeemed in whole or in part, out of the proceeds of a district bond issue or one or more refunding tax anticipation notes, bond anticipation or revenue notes. Such notes may bear interest as provided by law; shall mature within one year of their date of issuance; shall not be renewable or subject to extension of their maturity or redeemable or refundable out of or exchangeable for additional tax anticipation notes; and shall be secured by and paid solely out of the proceeds of taxes to be levied and collected by the district in the 12-month period succeeding their date of issuance.

Adopted September 30, 1996

Effective October 22, 1996

**§293.56. Requirements for Letters of Credit (LOC).**

(a) Any LOC submitted as a financial guarantee for combined amounts greater than \$10,000 and less than \$250,000 pursuant to these rules must be from financial institutions which meet the following qualifications:

(1) Qualifications for Banks.

- (A) Must be federally insured;
- (B) Sheshunoff rating must be ten or better; and
- (C) Total assets must be at least fifty million dollars.

(2) Qualifications for Savings and Loan Associations.

- (A) Must be federally insured; and
- (B) Tangible capital must be at least:
  - (i) 1.5 percent of total assets if total assets are fifty million dollars or more; or
  - (ii) Tangible capital must be at least 3.0 percent of total assets if total assets are less than fifty million dollars; and
- (C) Sheshunoff rating must be thirty or better.

(b) Any LOC submitted as a financial guarantee for combined amounts greater than \$250,000 pursuant to these rules must be from financial institutions which meet the following qualifications:

(1) Qualifications for Banks.

- (A) Must be federally insured;
- (B) Sheshunoff rating must be thirty or better; and
- (C) Total assets must be at least seventy-five million dollars.

(2) Qualifications for Savings and Loan Associations.

- (A) Must be federally insured;
- (B) Tangible capital must be at least:
  - (i) 3.0 percent of total assets and total assets must be seventy-five million dollars or more; or
  - (ii) Tangible capital must be at least 5.0 percent of total assets if total assets are less than seventy-five million dollars; and
- (C) Sheshunoff rating must be thirty or better.

(c) All LOC's must be valid for a minimum of one year from the date of issuance and if the aggregate amount of the LOC is \$100,000 or more, the LOC shall be held and administered in an account for the benefit of the district by a bank corporate trust department. The district shall authorize the agent to administer all draws on the letter of credit including a final draw prior to the LOC expiration date if the letter of credit is:

- (1) not renewed for an additional year at least 45 days prior to its date of expiration;
- (2) not called upon in its entirety at least 30 days prior to its date of expiration;
- (3) not found to be unnecessary by the commission at least 45 days prior to its date of expiration; or
- (4) no longer required because the construction project has been completed as certified by the district's engineer at least 45 days prior to its date of expiration.

(d) Should the financial institution or agent deposit funds in an account in the name of the district, the district shall not commit or expend such funds until it has received written authorization from the executive director.

(e) All LOC's required pursuant to these rules must be approved by the commission staff.

(f) Form of Letter of Credit. The following form shall be used as a letter of credit for the financial guarantee for utilities construction and/or construction and paving of streets. **(Figure 1: 30 TAC §293.56)**

**Figure 1: 30 TAC §293.56**

**ROCK OF GIBRALTAR BANK  
LETTER OF CREDIT**

GREEN ACRES MUNICIPAL  
UTILITY DISTRICT  
ONE HOLLOW LOG LANE  
MEGALOPOLIS, TEXAS 77000

Irrevocable Credit No. 1  
Amount: \$250,000

GENTLEMEN:

You are hereby authorized to value on ROCK OF GIBRALTAR BANK for account of ALL AMERICAN HOMES, INC. up to an aggregate amount of ----- TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ----- available by your drafts at ----- SITE ----- to be accompanied by the original of this letter of credit and the following documents:

1. Written statement signed by the President or Vice President of the Board of Directors of Green Acres Municipal Utility District (or Collateral Agent if LOC is for \$100,000 or more) that All American Homes Inc. has failed to construct streets in Knot Holes West Subdivision in accordance with the terms of the Street and Utility Construction Agreement dated December 1, 1980. (Required only for draft No. 1), and a written certification(s) by the engineer for Green Acres Municipal Utility District that payment is due to the contractor for construction of streets in Knot Holes West Subdivision in the amount shown on the draft(s); or
2. Written statement signed by the President or Vice President of the Board of Directors of Green Acres Municipal Utility District (or Collateral Agent if LOC is for \$100,000 or more) that All American Homes, Inc. has failed to renew or replace this letter of credit within forty-five (45) days prior to its expiration date; or
3. Written statement signed by the President or Vice president of the Board of Directors of Green Acres Municipal Utility District (or Collateral Agent if LOC is for \$100,000 or more) that All American Homes, Inc. has commenced any proceeding, voluntary or involuntary, or that any proceeding has been commenced against All American Homes, Inc. involving bankruptcy, insolvency, reorganization, liquidation or dissolution of All American Homes, Inc., that any receiver has been appointed by All American Homes, Inc., or that All American Homes, Inc. has made a general assignment for the benefit of creditors.

Multiple drafts may be presented.

Drafts must be presented to drawee bank not later than May 31, 1983, all drafts must state on their face "DRAWN UNDER ROCK OF GIBRALTAR BANK IRREVOCABLE CREDIT NO. 1".

We hereby engage with you, that all drafts drawn under and in compliance with the terms of this credit will be duly honored, if drawn and presented for payment at our office in Megalopolis, Texas, on or before the expiration date of this credit.

We further engage with you that without further notice, if so requested by the President or Vice President of the Board of Directors of Green Acres Municipal Utility District (or Collateral Agent if LOC is for \$100,000 or more), we shall deposit in a special account in the name of the district, the remaining face amount of the letter of credit if the letter of credit is:

- (1) not renewed for an additional year at least 45 days prior to its date of expiration;
- (2) not called upon in its entirety at least 30 days prior to its date of expiration;
- (3) not found to be unnecessary by the executive director of the Texas Natural Resource Conservation Commission at least 45 days prior to its date of expiration; or
- (4) unless the construction project has been completed as certified by the district's engineer at least 45 days prior to its date of expiration.

Very truly yours,  
Authorized Signature

Adopted September 30, 1996

Effective October 22, 1996

**§293.57. Form of Street and Utility Construction Agreement.**

The following form is sufficient for use as a contract between the developer and the district for street construction and paving and may be adapted to utilities construction. **(Figure 1: 30 TAC §293.57)**

**Figure 1: 30 TAC §293.57**

**STREET AND UTILITY CONSTRUCTION AGREEMENT**

THE STATE OF TEXAS  
COUNTY OF TRAVIS

THIS AGREEMENT is made and entered into as of this 1st day of December, 1980, by and between GREEN ACRES MUNICIPAL UTILITY DISTRICT of Travis County, Texas (the "District") and ALL AMERICAN HOMES, INC. (the "Developer").

Recital



The Developer is developing 300 lots in the Knot Holes West Subdivision which is located within the District. The District is preparing to sell its \$3,500,000 Waterworks and Wastewater Systems Combination Tax and Revenue Bonds, Series 1980 (the "Bonds") for the purpose of acquiring and/or constructing water, sewage, and drainage facilities to serve the Knot Holes West Subdivision. In order for the District's taxable valuations to increase to a level to support the debt service requirements on the Bonds, the Developer must complete the streets and utilities to service its 300 lots in the Knot Holes West Subdivision in the District. The purpose of this Agreement is to assure the District that the Developer will construct all streets and utilities to serve its 300 lots in the Knot Holes West Subdivision.

WITNESSETH

Green Acres Municipal Utility District and All American Homes, Inc. do hereby agree as follows:

1. The District agrees to proceed with the sale of the Bonds in accordance with the Order of the Texas Natural Resource Conservation Commission approving the Bonds and all applicable laws in an expeditious manner.
2. The District agrees that it will use the proceeds from the sale of such Bonds in accordance with the Order of the commission approving the Bonds, including reimbursement to the Developer of funds advanced to or on behalf of the District.
3. The Developer agrees that it will cause the completion of all streets and pay its share of costs associated with the water, wastewater and drainage construction to serve Developer's 300 lots within the Knot Holes West Subdivision in accordance with the plans and specifications prepared by ABC Engineers, Inc. and approved by the City of Megalopolis and Travis County not later than May 31, 1982.
4. The costs to construct the streets and pay its share of cost associated with the water, wastewater and drainage construction, including engineering and contingencies to serve Developer's 300 lots in the Knot Holes West Subdivision are estimated to be \$250,000.00. To assure the District and the Commission that adequate funds will be available to the District in the event that All American Homes, Inc. fails to construct the streets and utilities in accordance with the Agreement, the Developer will secure a letter of credit from ROCK OF GIBRALTAR BANK, Megalopolis, Texas in the amount shown above in favor of the District which shall provide that in the event the Developer fails to construct the streets and utilities in accordance with the terms and conditions of this Agreement that the District shall have the right to award and/or to assume existing construction contracts for the completion of the streets and utilities and to draw on the letters of credit for the purpose of making all payments due on the construction contracts for the streets and utilities; provided, however, the District shall not proceed in such a manner until the Commission has reviewed the matter and approved the District awarding the contract(s) or assuming existing contract(s) and utilizing the letter of credit. Such draw on a letter of credit shall be accompanied by an approved pay estimate by the District's engineer certifying that the amount is in order for payment. In addition, in the event that the letter of credit has not been renewed or replaced forty-five (45) days prior to its expiration date, the District shall have the right to draw down the lesser of the current cost, as estimated by the District's engineer, to construct the

streets and utilities, or the entire remaining balance of a letter of credit. In the event that the Developer commences any proceeding voluntary or involuntary, or any proceeding is commenced against the Developer involving the bankruptcy, insolvency, reorganization, liquidation, or dissolution of the Developer, or the Developer makes a general assignment for the benefit of creditors, the District shall have the immediate right to draw down the lesser of the current cost, as estimated by the District's engineer, to construct the streets and utilities, or the entire remaining balance of the letter of credit. The current estimated cost to construct the streets and utilities shall include construction contract amounts, engineering, surveying and testing fees and a 10% contingency. The District shall deposit such funds in a separate account and shall not commit or expend such funds until the Executive Director has authorized use of the funds as provided above. Within thirty (30) days after final completion of the streets and utilities, the District shall provide an accounting of the use of funds drawn pursuant to the provisions hereof and shall refund any remaining funds, including accrued interest, if any, to the Developer or his designee. In the event that a letter of credit is not sufficient to pay the entire cost of constructing the streets and utilities, the Developer shall be liable to the District for any costs in excess of the amount of the letter of credit.

5. Upon completion of the streets and utilities to serve Developer's 300 lots in the Knot Holes West Subdivision in accordance with this agreement, the District, upon written request by Developer and certification of completion by the District's engineer, shall authorize cancellation of the letter of credit for that section.

6. Developer and District agree that this agreement is being entered into for the purpose of complying with the condition provided in the Commission's Order to permit the District to advertise for the sale of Bonds in compliance with the Commission's Order and in accordance with §293.47(g) of this title (relating to Thirty Percent of District Construction Cost to be Paid by Developer) and as an inducement to the District to issue the Bonds.

Executed in multiple copies on the date shown above.

OF TRAVIS COUNTY, TEXAS

GREEN ACRES MUNICIPAL UTILITY DISTRICT

By:  
President, Board of Directors

ATTEST:

Secretary, Board of Directors

ALL AMERICAN HOMES, INC.

By:

Title

Adopted September 30, 1996

Effective October 22, 1996

**§293.58. Interest Rate on Bonds.**

(a) All bonds approved by the commission shall be deemed fixed rate unless the commission order specifically provides otherwise.

(b) The commission will consider variable rate, variable rate demand or other bonds on which the interest rate is not permanently fixed on the date of sale only for districts that have a ratio of assessed valuation to debt of a least 20 to 1. A district proposing to issue bonds other than with fixed rates shall submit:

(1) a plan of financing specifying all major terms of the plan;

(2) calculations prepared by the district's financial advisor showing tax rate required under the maximum interest rate allowed under the plan; and

(3) a resolution of the board of directors acknowledging the tax rate required under the maximum interest rate allowed under the finance plan and the district's willingness to levy such a tax if required.

(c) All bonds must be sold in compliance with the applicable statutes relating to public notice and competitive bids.

**§293.59. Economic Feasibility of Project.**

(a) In addition to determining the engineering feasibility of a project, the commission shall also determine the economic feasibility of each proposed bond issue, bond amendment, and extension of time application for a bond issue. The staff of the commission shall use the following sections in making economic feasibility analysis. In its written recommendations to the commission which analyzes the particular application, the staff shall always address the economic feasibility.

(b) Economic feasibility is the determination of whether the land values, existing improvements, and projected improvements in the district will be sufficient to support a reasonable tax rate for debt service payments for existing and proposed bond indebtedness while maintaining competitive utility rates. Utility rates which do not exceed the rates of the largest city in the geographic area in which the district is located are conclusively deemed to be competitive. Economic feasibility is influenced by many factors and varies widely depending on economic conditions, the real estate market, the number of competing projects and geographic location.

(c) Projected debt service tax rate is the tax rate required to meet projected annual debt service requirement using projected assessed valuations and an appropriate tax collection rate. The projected

annual debt service requirement shall include the previous and proposed debt. The projected debt service tax rate for any bond issue shall be shown in the cash flow table as a level or decreasing tax rate.

(d) No-growth debt service tax rate is the tax rate required to meet projected annual debt service requirements using the current assessed value and a 100% tax collection rate. The current value is determined by either:

(1) The most recent certificate of assessed valuation from the central appraisal district;  
or

(2) A certificate of estimated assessed valuation from the central appraisal district. Projected annual debt service requirements shall include the previous and proposed debt. The no-growth debt service tax rate for any bond issue shall be shown on the cash flow table as a level or decreasing tax rate.

(e) Combined no-growth tax rate is the sum of the following:

(1) No-growth debt service tax rate of the district;

(2) Projected no-growth debt service tax rate of all overlapping entities specifically attributable to water, wastewater, drainage that are smaller in size than a county, and for roads if the entity is a road district or road utility district smaller in size than a county commissioner's precinct. In other words, for road districts or road utility districts that are as large as one county commissioner's precinct, the road district tax is not counted.

(3) An equivalent surcharge tax rate for water and wastewater surcharge, if any;

(4) City tax rate specifically attributable to water, sewage and drainage if the district is located within a city;

(5) Current or proposed district or overlapping maintenance tax levy, if any;

(6) Contract tax, if any;

(7) Less any equivalent tax rebate or other payments.

(f) Combined projected tax rate is the sum of the following:

(1) Projected debt service tax rate of the district;

(2) Projected debt service tax rate of all overlapping entities specifically attributable to water, wastewater, and drainage, and for roads if the entity is a road district or road utility district smaller in size than a county commissioner's precinct.

(3) An equivalent surcharge tax rate for water and wastewater surcharge, if any;

(4) City tax rate specifically attributable to water, sewage and drainage if the district is located within a city;

(5) Current or proposed district or overlapping maintenance tax levy, if any;

(6) Contract tax, if any;

(7) Less any equivalent tax rebate or other payment.

(g) A surcharge is a flat charge in addition to rates imposed on residents receiving water and/or wastewater service from resources of a city or other entity and supplied through district facilities. Surcharge revenues are placed in the district's debt service fund and are intended to be used to meet the debt service requirement on the district's bonds.

(h) For districts collecting surcharge revenues, the equivalent surcharge tax rate shall be calculated as follows:

(1) For residential development with similar house prices: **(Figure 1: 30 TAC §293.59(h)(1))**

**Figure 1: 30 TAC §293.59 (h)(1)**

$$\text{equivalent tax rate} = \frac{\text{monthly surcharge} \times 12 \times 100}{\text{average house price}}$$

(2) For mixed-use development and diverse house prices: **(Figure 2: 30 TAC §293.59(h)(2))**

**Figure 2: 30 TAC §293.59 (h)(2)**

$$\text{equivalent tax rate} = \frac{\text{total annual surcharge revenues at projected build out} \times 100}{\text{total assessed value of district at buildout}}$$

(3) For purposes of this calculation, no adjustments shall be made for projected collection rate of the surcharge, interest earnings on the surcharge account or other factors.

(i) For districts receiving a rebate for taxes paid to a city or other entity for water, wastewater, drainage or road service, the equivalent tax rebate shall be calculated as follows: **(Figure 3: 30 TAC §293.59(i))**

**Figure 3: 30 TAC §293.59(i)**

$$\frac{(\text{total amount rebated by entity to district}) \times 100}{\text{certified assessed value of district}}$$

(j) The assessed value is the appraised value after considering exemptions and special valuations and is the amount to which the tax rate is applied to determine the total tax levy.

(k) For a district's first bond issue, the following paragraphs apply except that paragraphs (5), (6), (8), and (10) of this subsection are only applicable to a district that has a developer as defined by the Texas Water Code §49.052(d).

(1) The District shall provide the current and projected tax rates of all entities levying or proposing to levy taxes on land within the district and a comparison of such taxes with the total tax levy on all competing projects in the same market area, as defined in the market study, if applicable, shall be provided.

(2) A cash flow analysis to determine the projected debt service revenue and projected tax rate shall be provided. It should include the following assumptions:

(A) Each ending debt service balance in the cash flow analysis will be not less than 25% of the following year's debt service requirement.

(B) Interest income will only be shown on the ending debt service balance for the first two years.

(C) A 90% tax collection rate shall be used in all the projected tax rate calculations and a 100% tax collection rate shall be used in the no-growth tax rate calculations.

(D) The projected tax rate shall be level or decreasing for the life of the bonds.

(3) The combined projected tax rate shall not exceed the following:

(A) \$1.50 in Harris, Galveston, Montgomery, Fort Bend, Waller, and Brazoria Counties;

(B) \$1.20 in Dallas, Denton, Collin, Tarrant, Travis, Hays, Williamson, Comal, and Guadalupe Counties;

(C) \$1.00 in all other counties.

(4) The combined no-growth tax rate shall not exceed the following:

(A) \$2.50 in Harris, Galveston, Montgomery, Fort Bend, Waller, Brazoria Counties;

(B) \$2.20 in Dallas, Denton, Collin, Tarrant, Travis, Hays, Williamson, Comal, and Guadalupe Counties;

(C) \$2.00 for all other counties.

(5) The following applies to the tax assessor's certificate:

(A) If the valuations contained in the certificate of certified assessed valuation are at least 25% higher than those contained in the previous year's certified valuation, a written explanation from the district of such increase and a detailed calculation demonstrating how the value was derived shall be provided.

(B) In determining the projected or no-growth tax rates, a certificate of estimated assessed valuation may be used under the following conditions:

(i) the developer or landowner to receive bond proceeds shall certify, represent, and agree that it will not challenge and attempt to reduce its valuations below the values shown on the certificate for the life of the bonds;

(ii) if the valuation contained in the certificate of estimated taxable valuation is at least 25% higher than that contained in the most recent certified valuation, a written explanation from the District of such increase shall be provided;

(iii) if the estimated taxable valuation results in an exemption from Section 293.47 of this title (Relating to Thirty Percent of District Construction Costs To Be Paid by Developer) and the final certificate of taxable value is not sufficient for an exemption from that section, the developer will be obligated to refund to the district the difference in the bond issue requirement without developer contribution and with developer contribution plus interest at the bond interest rate to the district; and

(iv) developed land values will not be used in the commission's analysis for lots which do not have completed water, wastewater, and drainage facilities and roads constructed to county or city standards, as applicable, at the time of development.

(6) At the time of commission approval, the following shall apply:

(A) all underground water, wastewater, and drainage facilities to be financed with proceeds from the proposed bond issue or necessary to serve the projected build-out used to support the feasibility of the subject bond issue, shall be at least 95% complete as certified by the district's engineer;

(B) all groundwater, surface water, waste discharge permits or other permits needed to secure capacity to support the projected buildout shall have been obtained;

(C) sufficient lift station, water plant and sewage treatment plant capacity, as applicable depending on the type of district, to serve the connections projected for a period of not less than eighteen months shall be either 95% complete as certified by the district's engineer or available in existing plants pursuant to executed contracts for capacity in plant(s) owned by other entities (but in no event less than 50,000 gallons per day water plant and sewage treatment plant capacity);

(D) water supply, lift station, and wastewater treatment capacity needed to support the projected build-out used to support the feasibility of the subject bond application shall be existing or funds for that capacity shall be included in the bond issue or secured by a letter of credit or other acceptable guarantees approved by the executive director; and

(E) all street and road construction to provide access to the areas provided with utilities to be financed with proceeds from the proposed bond issue, or necessary to serve the projected build-out used to support the feasibility of the subject bond issue, shall be 95% complete as certified by the district's engineer. All streets and roads shall be constructed in accordance with city or county standards, as appropriate.

(7) At least 25% of the projected value of houses, buildings and/or other improvements shown in the projected tax rate calculations shall be completed prior to advertising for the bond issue. The projections used to satisfy this section shall also be used in the calculations required by Subsection (k) (2) and (3) of this section.

(8) For bonds supported by taxes, a written agreement must be executed between the district and the developer and any other landowner and their respective lenders receiving proceeds of the bonds which permanently waives the right to claim agricultural, open-space, timberland or inventory valuation for any land, homes or buildings which they own in the district with respect to taxation by the district. The agreement shall be binding for 30 years on such developer, other landowners, their respective lenders, any related or affiliated entities and their successors and assignees, unless such exemptions were in effect at the time of the commission's approval of the bond issue and such exemptions were shown in the projected tax rate calculations. Such developer, landowners, and lenders shall record covenants running with the land to such effect, which shall not be modified or released without written authorization of the commission, and shall provide recorded copies to the commission prior to the approval of the bond issue.

(9) One or more of the foregoing requirements may be waived for good cause by commission order if all of the facilities proposed under a bond issue application are essential because of valid orders, permits or actions against the district by a governmental agency or court. If only a portion of the bond issue is for facilities essential because of valid orders, permits or actions against the district by a governmental agency or court and if a waiver of any of the foregoing requirements is requested, all nonessential projects may be deleted from the bond issue if not feasible under the other provisions of these rules.

(10) A current market study is required for districts using growth projections to support the feasibility of the bond issue. The market study will meet the guidelines set out in the Bond Application Report Format. The market study provided will specifically address the projected building program for the three years subsequent to filing of the bond application and the period of projected build-out shown in the bond application and the competing projects in the surrounding market area. The study shall contain a detailed description of the proposed development and the houses, buildings and other improvements which are proposed.

(11) Requirements of subsection (k) (6) (A), (C) and (E), and the requirements of subsection (k) (7) of this section shall not apply in the following cases where:



(A) the no-growth tax rate for a district containing 2,000 acres or more providing only drainage facilities does not exceed \$1.30; the no-growth tax rate of a district providing major water and sewage facilities which it finances by the issuance of its bonds to an area containing 2,000 acres or more does not exceed \$1.30, and the combined no-growth tax rate does not exceed \$2.00; and, the developer has completed a substantial amount of major thoroughfare or other infrastructure to serve the district; or

(B) the district has an acceptable credit rating as defined in Section 293.47(b)(4) (Relating to Thirty Percent of District Construction Costs To Be Paid by Developer) or a credit enhanced rating as defined in Paragraph (5); or

(C) the district is providing water, wastewater, and drainage facilities and the combined no-growth tax rate of all overlapping entities specifically attributable to water, sewage and drainage, and roads if the entity is a special district encompassing less than one county commissioner's precinct, if any, does not exceed the following:

(i) \$1.50 in Harris, Galveston, Montgomery, Fort Bend, Waller and Brazoria Counties.

(ii) \$1.20 in Dallas, Denton, Collin, Tarrant, Travis, Hays, Williamson, Comal and Guadalupe Counties.

(iii) \$1.00 in all other counties.

(D) For the immediately preceding exceptions in subparagraph (A), or (C) of this paragraph, the developer shall provide a guarantee for its 30% share, if required pursuant to §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer), in the form and manner required by subsection (g) thereof. For the immediately preceding exceptions in subparagraph (B) or (C) of this paragraph, the developer shall provide a paving guarantee pursuant to §293.48 of this title (relating to Street and Utilities Construction by Developer).

(I) For a district's second and subsequent bond issues, all of the foregoing of subsection (k) of this section shall apply, and the following shall apply except that paragraphs (2), (3), (4), and (5) of this subsection only apply to districts that have a developer as defined by Water Code, §49.052(d) or to districts which fail to meet the criteria set out in subsection (k)(11) of this section.

(1) A 90% tax collection rate shall be used in the projected tax rate calculations unless the district demonstrates that its historical collection rate is higher, and a 100% tax collection rate shall be used in the no-growth tax rate calculations.

(2) The water, wastewater and drainage facilities financed by the district under previous bond issues and all road and street construction to serve such connections shall be at least 95% complete as certified by the district's engineer.

(3) Sufficient lift station, water plant and sewage treatment plant capacity to serve the connections shown in the tax rate calculations submitted in prior bond issues shall be at least 95%

complete as certified by the district's engineer, unless the district is a participant in a regional surface water or wastewater plant, a permit sufficient for the expansion has been issued, and either:

(A) funds are available to finance such capacity and any additional capacity necessary for a feasible expansion;

(B) sufficient capacity is contractually available to serve all such prior connections; or

(C) the plant is under construction with sufficient capacity to serve all such prior connections.

(4) Houses and/or buildings equal to 75% of the projected build-out used in the projected tax rate calculations contained in all prior bond issues shall be completed and may be located on either:

(A) the area developed from the proceeds of the prior bond issues; or

(B) a combination of the area developed from the proceeds of prior bond issues, the proposed bond issue, and future bond issues.

(5) The requirements of subsection (k)(10) of this section shall apply, unless the district requests and the commission, in its discretion waives such requirement for one of the following reasons:

(A) disregarding those areas which had growth projected and were financed in previous bond issues, at least 50% of the value of the houses and/or buildings shown in the buildout schedule and used in the projected tax rate calculations supporting the subject bond issue must be existing;

(B) the district anticipates receiving an acceptable credit rating as defined in §293.47(b)(4) of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer) or a credit enhanced rating as defined in paragraph (5) of this subsection, and such rating must be obtained prior to the sale of bonds; or

(C) the district has ratio of debt to assessed valuation as provided in §293.47(a)(1) of this title.

(m) Except for districts whose primary purpose is to provide service for agricultural uses, the economic feasibility of bond issues supported by benefit assessments shall be analyzed by converting the assessment to an equivalent tax rate per unit of assessment. The calculated equivalent tax rate shall be added into the combined no-growth tax rate defined in subsection (e) and the combined projected tax rate defined in subsection (f) of this section. The commission may compare these equivalent tax rates to those listed in §293.59 (k) (3 and 4).

(n) Bond issues supported only by revenue from a defined area shall be analyzed to assure that the defined area meets the requirements of this section independently of the remainder of the issuing district.

(o) A district may request a variance if it does not meet the guidelines contained in subsection (k) and (l) of this section, and a majority of the district's board of directors finds by resolution that the district would be justified in requesting a variance. The district will be responsible for providing sufficient documentation to justify any request for a variance. The commission will only grant variances in exceptional cases and may deny any request for a variance. The commission shall not grant a variance to the maximum combined projected tax rate or the maximum combined no-growth tax rate specified in subsection (k) of this section for districts that have a developer and the district is financing 100 percent of construction costs pursuant to criteria set out in §293.47 (a) of this title which would otherwise require 30 percent developer participation. In determining whether to grant a variance, the following factors shall be considered;

(1) The degree of variation from the guidelines;

(2) The past history of the district with respect to its projections versus actual build-out and compliance with commission rules;

(3) The past history of the developer and related or affiliated entities with respect to its projections versus actual build-out and its compliance with commission rules and agreements with the district and other districts in which it developed land;

(4) Other factors peculiar to the district, such as the area in which situated, economic factors, the adjoining competitive developments and their status;

(5) The financial resources of the developer and its lender and any special commitments, obligations or expenditures for the project;

(6) Past history of the market area in which the project is located; and

(7) Other factors which may affect the feasibility of the project.

Adopted September 30, 1996

Effective October 22, 1996

**§293.60. Conditional Approval Based on Performance of a Developer in Other District Projects.**

(a) The commission, in evaluating an application by a district for approval to reimburse construction funds to a developer, may consider the performance of the developer or related or affiliated entities in other district projects and may condition reimbursement on certain actions of the developer or related or affiliated entities.

(1) Issues which may be considered in evaluating the performance of a developer may include the past history of the developer and related or affiliated entities with respect to:

(A) payment of financial obligations including taxes, standby fees and other user fees to any district;

(B) devaluation of property values by claiming special exemptions within any district after the commission's approval of bonds in said district without compensating agreements with the district;

(C) compliance with commission rules and orders; and

(D) performance under agreements with any district including, but not limited to, cost sharing and maintenance agreements, street and road construction agreements, thirty percent cost participation agreements, and financial guarantees.

(2) Actions of a developer or related or affiliated entity on which reimbursement of construction funds to a developer may be conditioned include:

(A) payment of financial obligations including taxes, standby fees and other user fees to any district to which they are owed;

(B) withdrawal of a claim of special exemption which resulted in the devaluation of property in any district after the commission's approval of bonds for said district or the execution of compensating agreements for the district;

(C) compliance with commission rules and orders; and

(D) performance under existing agreements with any district including, but not limited to, cost sharing and maintenance agreements, street and road construction agreements, thirty percent cost participation agreements, and financial guarantees.

(b) For the purposes of this section "developer" means "developer of property in the district" as defined by Water Code, §49.052(d) and its lienholder if it is in default.

(c) For the purposes of this section "related or affiliated entities" means any entity owned in whole or majority part by the developer but does not include development lenders unless they are joint venture partners with the developer in such districts.

(d) In response to a written request, the district shall submit to the executive director information regarding the developer or related or affiliated entities, including, but not limited to, the names of principals, individuals, affiliated entities and lienholders to aid the commission's evaluation of the past history of the developer.

Adopted September 30, 1996

Effective October 22, 1996

**§293.61. Bond Related Documents to be Submitted to the Commission.**

Every district required to obtain commission approval of its projects relating to the issuance and sale of bonds as indicated in §293.41 of this title (relating to Approval of Projects and Issuance of Bonds), is required to submit the following bond related reports and/or documents:

(1) If the commission directs funds from the bond issue to be escrowed, a certified copy of the executed escrow agreement with an authorized financial institution of the district's choice shall be submitted within five days of that transaction.

(2) The district shall submit to the executive director a copy of the final official statement within 30 days after the final official statement is issued. The executed contract for the sale of the bonds and debt service schedule shall be submitted to the executive director within 30 days after execution of the contract.

Adopted September 30, 1996

Effective October 22, 1996